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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Accent Communications, Inc., Armour Independent Telephone
Company, Bridgewater-Canistota Independent Telephone
Company, James Valley Cooperative Telephone Company, RC
Communications, Inc., and Roberts County Telephone Cooperative
Association - Request to Remove Universal Service Caps

Alpine Communications, L.C., Arapahoe Telephone Company,
Great Plains Communications, Inc., Kennebec Telephone
Company, Inc., The Nebraska Central Telephone Company, and
Western Telephone Company - Request to Remove Universal
Service Caps

Maine Telephone Company, Northland Telephone Company of
Maine, Inc., Sidney Telephone Company and Standish Telephone
Company - Request to Remove Universal Service Caps

Petition for Removal of Caps on High Cost Loop Support Filed by
Sunflower Telephone Company, Inc. and Bluestem Telephone
Company; S&T Telephone Cooperative Association, Inc. and
S&T Communications of Dighton, Inc.; Golden Belt Telephone
Association, Inc.; Northeast Missouri Rural Telephone Company
and Modern Telecommunications Company

Interstate Telecommunications Cooperative, Inc. and Intrastate
Telephone Company, Inc.; Hanson Communications, Inc. and Fort
Randall Telephone Company and Mt. Rushmore Telephone
Company; Midstate Telephone Company and Heartland
Communications, Inc.; Mobridge Telecommunications Company;
Hanson County Telephone, Inc. and Hanson Communications, Inc.)
dba McCook Telecom; Splitrock Telecom Cooperative, Inc. and
Splitrock Properties, Inc. - Petition for Removal of Individual
Caps on High Cost Loop Support

To: Magalie Roman Salas, Secretary

EX PARTE PRESENTATION

Accent Communications, Inc. (Accent), Alpine Communications, L.C. (Alpine
Communications), Armour Independent Telephone Company (Armour), Bluestem

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CC Docket No. 96-45

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Telephone Company (Bluestem), Bridgewater-Canistota Independent Telephone Company (Bridgewater-Canistota), James Valley Cooperative Telephone Company (James Valley), Kennebec Telephone Company, Inc. (Kennebec), Maine Telephone Company (Maine Telephone), Midstate Communications, Inc.¹ (Midstate), Northland Telephone Company of Maine, Inc. (Northland), Sidney Telephone Company (Sidney), Standish Telephone Company (Standish), and Sunflower Telephone Company, Inc. (Sunflower) (collectively, the "Rural LECs") submit this written ex parte presentation to bring to the Commission's attention additional precedent supporting their requests for a January 1, 2000 effective date for the removal of their universal service caps.² Many of the issues discussed below were raised in a telephone conversation between Gary Seigel, Common Carrier Bureau, FCC, and Susan Bahr, Law Offices of Susan Bahr, PC, on April 11, 2000.

I. The Specific Circumstances Surrounding These Proceedings Mandate a January 1, 2000 Effective Date

Because several months have passed since January 1, 2000, the Commission's

¹ "Midstate Communications, Inc." is the name of the entity that resulted from a merger of Midstate Telephone Company and Heartland Communications, Inc., petitioners in these proceedings.

² Many of the Rural LECs have asked the Commission to remove their caps for prior years as well. Interstate Telecommunications Cooperative, Inc. Petition for Removal of Individual Caps on High Cost Loop Support, at 11-12 (dated Nov. 15, 1999); Accent Communications, Inc., Joint Application for Review, AAD 95-124 (dated May 13, 1996). This presentation focuses only on the issue of the requested January 1, 2000 effective date for removal of the universal service caps.

grant of the requested effective date would cause the relief to be retroactive. But the specific circumstances surrounding these proceedings support retroactive relief here, for three reasons. First, the Common Carrier Bureau (Bureau) already granted a January 1, 2000 effective date to similarly situated local exchange carriers (LECs) involved in the USF Cap Removal Order.³ Second, two LECs that were involved in the Maine transaction, Bryant Pond Telephone Company (Bryant Pond) and Oxford West Telephone Company (Oxford West), were never subject to caps⁴ and have been receiving uncapped universal service support, as cost companies, since 1999.⁵ Third, when the Bureau originally imposed the universal service caps on the Rural LECs located in South Dakota, it promised to “expedite” its review if any LECs needed to exceed their individual caps.⁶ The Rural LECs filed their requests for removal of their caps shortly

³ Petitions for Waiver and Reconsideration Concerning Sections 36.611, Memorandum Opinion and Order on Reconsideration, DA 99-1845, para. 16, released Sept. 9, 1999 [hereinafter USF Cap Removal Order]; see, e.g., Petition for Removal of Caps on High Cost Loop Support Filed by Sunflower Telephone Company, Inc., at 5-7 [hereinafter Sunflower Petition].

⁴ See Petitions for Waiver Filed by Bryant Pond Tel. Co., Memorandum Opinion and Order, 12 FCC Rcd. 1479, 1488 (Com. Car. Bur. 1997) [hereinafter Maine Waiver Order].

⁵ See, e.g., USAC High Cost Fund Size Projection for Q1 2000, App. 2 (on FCC's Web page).

⁶ Petitions for Waiver Filed by Accent Communications, Inc., Memorandum Opinion and Order, 11 FCC Rcd. 11,513, 11,528 (Com. Car. Bur. 1996), Joint Appl. for Review Pending. Expedited treatment must also be given to the Rural LECs located in other states pursuant to McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993), which requires the Commission to treat similarly situated parties alike.

after the FCC released the USF Cap Removal Order,⁷ and before the requested effective date of January 1, 2000. Almost six months have passed since the Rural LECs filed their requests. Granting an effective date of January 1, 2000 would permit the Bureau to fulfill its commitment to provide expedited treatment.

The Commission has granted retroactive relief in similar situations in the past. In February and April 1998, the Bureau granted universal service support -- including high cost support -- retroactive to January 1, 1998 for five LECs that had not been granted ETC status by that date. The Commission's justification for retroactive support was that: (a) the LECs had filed their requests before the January 1 effective date; and (b) granting support on a retroactive basis would permit their customers to benefit from the support to which the LECs would have been entitled but for the need for administrative action.⁸ This is analogous to the situation at hand. Like the five LECs, the Rural LECs requested relief prior to the proposed effective date and their customers should not be penalized by the happenstance of the date on which the Commission releases an order. In sum, the Commission should grant retroactive support to the Rural LECs here just as it did for the five LECs, thereby fulfilling its commitment to provide expedited treatment

⁷ USF Cap Removal Order para. 16.

⁸ Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd. 5318, 5333 (1997) [hereinafter ETC Order]; Designation of Fort Mojave Telecommunications, Inc. et al. as Eligible Telecommunications Carriers, Memorandum Opinion and Order, 13 FCC Rcd. 4547, 4555-56 (Com. Car. Bur. 1998); Federal-State Joint Board on Universal Service, Memorandum Opinion and Order, 13 FCC Rcd. 15,486 paras. 7-8 (Com. Car. Bur. 1998) (rural LEC relying on universal service support to keep rates reasonable).

and satisfying the requirement to treat the Rural LECs equivalent to the LECs involved in the USF Cap Removal Order and the Maine Waiver Order.⁹

II. The Rural LECs' Individual Circumstances Compel Retroactive Relief

The provision of universal service support retroactive to January 1, 2000 is further supported by the Rural LECs' individual circumstances. First, Accent, Armour, Bridgewater-Canistota, James Valley and Midstate (the "South Dakota LECs") are average schedule companies that should have never been subject to a cap, because their universal service support is not based on their costs.¹⁰ A denial of retroactive relief would only serve to perpetuate a penalty that was not warranted in the first place. Second, Maine Telephone, Northland, Sidney and Standish (collectively, the "Maine LECs") note that the Bureau's reason for imposing a cap -- that the buyers' estimates could prove to be inaccurate later due to the buyers' lack of experience in operating the acquired exchanges -- is less relevant in their case. The Maine LECs had operated their companies for two years prior to filing their study area waiver request.¹¹ Thus, their universal service support projections were more comparable to projections that would have been made by other existing LECs who were not involved in acquisitions and whose universal service support was not capped. Third, the Bureau placed a cap on Alpine

⁹ See, e.g., Sunflower Petition, at 5-7.

¹⁰ E.g., Accent Communications, Inc. Request for Removal of Universal Service Caps, at 5-6 (filed Oct. 15, 1999).

Communications right after the release of the Maine Waiver Order in which the Bureau did not cap Bryant Pond and Oxford West.¹² Even if, for the sake of argument, the Commission were to decide that its decision concerning Bryant Pond and Oxford West does not, in and of itself, support retroactive relief for all of the Rural LECs, the Maine Waiver Order certainly signaled a change in policy that was not subsequently applied to Alpine Communications. Yet, no reason was given for capping Alpine Communications when Bryant Pond and Oxford West were not capped. Finally, like the other Rural LECs, Bluestem, Kennebec and Sunflower participated in transactions that were contemporaneous to, or the same as, the transactions involving the LECs whose caps were removed in the USF Cap Removal Order. In sum, there is no justification for treating any of the Rural LECs differently from the LECs whose caps have been removed or from other LECs that have never been subject to a cap. Thus, there can be no justification for denying retroactive relief.

III. Universal Service Support Adjustments Are Made Routinely

The Rural LECs recognize that the grant of retroactive relief could impact the universal service support for other LECs. However, that should not preclude the Commission from granting retroactive relief here for several reasons. First, the FCC did not consider the impact on other LECs when it adopted the USF Cap Removal Order, and

¹¹ See Maine Waiver Order, 12 FCC Rcd. at 1479.

in any event, the impact would be minimal. Second, LECs are accustomed to NECA making adjustments to their high cost support resulting from updated high cost data submitted by other LECs pursuant to Section 36.612 of the Commission's Rules. Third, by issuing its Public Notice in these proceedings, the Bureau gave notice of the requests for retroactive support. All of the telephone trade associations filed comments, and no party objected to the possibility that relief could be granted on a retroactive, rather than a prospective, basis. Finally, the United States Telecom Association is the party that initially proposed the retroactive universal service support adopted in the ETC Order, notwithstanding the possible impact on its member LECs.¹³

The steps that NECA will need to take to implement the requested retroactive universal service support will be comparable to the high cost support adjustments which NECA makes on a routine basis as LECs provide updated data. Indeed, the Bureau has anticipated similar adjustments in other proceedings where it required NECA to keep its two-year true-up window open so that universal service adjustments could be made after an order was released.¹⁴ And earlier this year, the Commission ordered NECA to implement retroactive high cost support for non-rural LECs subject to the new forward-

¹² See id. at 1488; Petitions for Waiver Filed by Alpine Communications, L.C., Memorandum Opinion and Order, 12 FCC Rcd. 2367, 2373 (Com. Car. Bur. 1997).

¹³ United States Telephone Association Petition for Clarification, Docket No. 96-45 (filed Dec. 11, 1997); ETC Order, 13 FCC Rcd. at 5333.

¹⁴ E.g., USF Cap Removal Order para. 25 (granting retroactive relief for Vermont LECs after the two-year window otherwise would have closed). Susan Bahr (undersigned) is

looking support mechanism. In the third and fourth quarters of 2000, NECA will need to distribute support corresponding to the first and second quarters of 2000.¹⁵ The Commission should require NECA to make similar accommodations for the Rural LECs here.

In sum, the Commission should grant retroactive relief because the impact of the removal of universal service caps was not considered in the USF Cap Removal Order, and the only parties that could be impacted by a retroactive effective date were given notice and did not object to it. Simply put, LECs, and NECA, are accustomed to ongoing adjustments to universal service support.

Conclusion

As discussed above, the Commission should provide an effective date of January 1, 2000 for the requested removal of the Rural LECs' individual universal service caps because:

1. The Bureau removed other similarly situated LECs' caps as of January 1, 2000 in the USF Cap Removal Order.
2. Two similarly situated LECs have been receiving uncapped universal service support since 1999.

attempting to obtain a copy of the letter sent by the FCC asking NECA to keep the two-year window open for the Vermont LECs. If she obtains the letter, she will send a copy to the FCC.

¹⁵ Federal-State Joint Board on Universal Service, Nineteenth Order on Reconsideration, 14 FCC Rcd. 21,664 (1999) (see Section 54.313(c)).

3. The Bureau promised expedited treatment for requests to exceed the universal service caps.
4. The Bureau granted retroactive universal service support in other cases.
5. The South Dakota LECs are average schedule companies for which there was no reason to impose caps in the first place.
6. The Maine LECs submitted universal service projections based on actual operations, thereby rendering moot the Bureau's reasons for imposing a cap.
7. Alpine Communications should not have been subject to a cap because, among other things, the Bureau did not place caps on two LECs in the preceding Maine Waiver Order.
8. Like the other Rural LECs, Bluestem, Kennebec and Sunflower participated in transactions that were contemporaneous to, or the same as, the transactions involving the LECs in the USF Cap Removal Order.
9. LECs, and NECA, are accustomed to adjustments to high cost support, and no one objected to the possibility of a retroactive, rather than a prospective, effective date.

Grant of this relief also is in the public interest because without it, the Rural LECs' customers would be penalized for the happenstance of the date of the Commission's release of its order.

Pursuant to Section 1.1206 of the Commission's Rules, this memorandum and nine copies are being submitted to the Secretary. A copy is also being sent to Gary Seigel.

Respectfully submitted,

**ACCENT COMMUNICATIONS, INC., ALPINE COMMUNICATIONS, L.C.,
ARMOUR INDEPENDENT TELEPHONE COMPANY, BRIDGEWATER-
CANISTOTA INDEPENDENT TELEPHONE COMPANY, JAMES VALLEY
COOPERATIVE TELEPHONE COMPANY, KENNEBEC TELEPHONE
COMPANY, INC., MAINE TELEPHONE COMPANY, NORTHLAND
TELEPHONE COMPANY OF MAINE, INC., STANDISH TELEPHONE
COMPANY, AND SUNFLOWER TELEPHONE COMPANY, INC.**

By



Susan J. Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089
Phone: (301) 258-8947
Fax: (301) 208-8682

Their Attorney



Pat Morse
Sunflower Telephone Company,
Inc. and Bluestem Telephone
Company
PO BOX 199
Dodge City, KS 67801
Phone: (316) 227-4400
Fax: (316) 227-8576



Mark Benton
Midstate Communications, Inc.
120 E. First, PO BOX 48
Kimball, SD 57355
Phone: (605) 778-6221
Fax: (605) 778-8080

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